

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE, PC
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Stuart H. Singer (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard – Suite 1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Attorneys for The SCO Group, Inc.

Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stephen N. Zack (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**[PROPOSED] ORDER GRANTING
SCO'S MOTION FOR RELIEF
FOR IBM'S SPOILATION OF
EVIDENCE**

Case No. 2:03CV0294DAK

Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

Plaintiff/Counterclaim-Defendant, The SCO Group (“SCO”), filed its Motion for Relief for IBM’s Spoliation of Evidence on September 25, 2006. For the reasons set forth in SCO’s Motion and Memorandum, and for good cause showing, this Court GRANTS SCO’s Motion for Relief for IBM’s Spoliation of Evidence. Pursuant to this Order, IBM is hereby precluded from

contesting that it relied on AIX and Dynix/ptx source code in making contributions to Linux development. Furthermore, an adverse-inference instruction shall be entered against IBM, consistent with the common-sense and well-established principle that a party who has notice that evidence is relevant to litigation and who proceeds to destroy it is more likely to have been threatened by that evidence than a party in the same position who does not destroy the evidence.

IT IS SO ORDERED

DATED this ____ day of _____.

Dale A. Kimball, District Judge